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Circular Letter: DHCQ 11-12-554

TO: Nursing Home Administrators

FROM: Madeleine Biondolillo, MD, Director

DATE: December 27, 2011

RE: Informal Dispute Resolution (IDR) and Independent Informal Dispute Resolution (IIDR)

Federal regulations require each state implement an Informal Dispute Resolution (IDR) process that allows nursing homes to contest deficiencies without initiating a formal administrative appeal (42 CFR §488.331), and for surveys and complaints completed after January 1, 2012, an "Independent Informal Dispute Resolution" (IIDR) process for deficiencies resulting in the imposition of a Civil Monetary Penalty (CMP) that CMS determines to be subject to being placed in escrow, and for which the IDR process has not been completed (42 CFR §488.431). The regulations do not prescribe how the process must be structured or implemented. Each state has the discretion to establish its own procedure.

In 2006, Massachusetts formally adopted as its IDR process the review of disputed deficiencies by a seven member committee. Committee members have included representatives of the state's Long Term Care Ombudsman program, the Board of Nursing Home Administrators, providers and Department of Public Health, Division of Health Care Quality (Department) staff. The "IDR Committee", chaired by a Department member, has met monthly to review requests for IDR.

In response to federal regulations that require the implementation of an IIDR process, Massachusetts will build upon this approach, with IIDR review being conducted by a five member committee that will consist of members of the IDR committee, minus the two Department members. The "IIDR Committee", chaired by a representative of the state's Long Term Care Ombudsman program, will meet monthly to review requests for IIDR, following the IDR Committee's meeting.

The vote of the IDR Committee remains a recommendation of the committee, subject to the final approval of the Department. In regard to IIDR, in the event the Department disagrees with the recommendation of the IIDR Committee, the Department will forward the request and written record of the IIDR Committee to the CMS Regional Office for review and a final decision.

The attached materials describe both the IDR process and the new IIDR process in detail. To summarize, a facility requesting either IDR or IIDR should submit a written statement concerning its position on the deficiency being challenged. The IDR may include documentation that the facility believes will support its position that the facts or conclusions drawn by the surveyor were incorrect. Materials submitted in support of a request should be clear and concise.

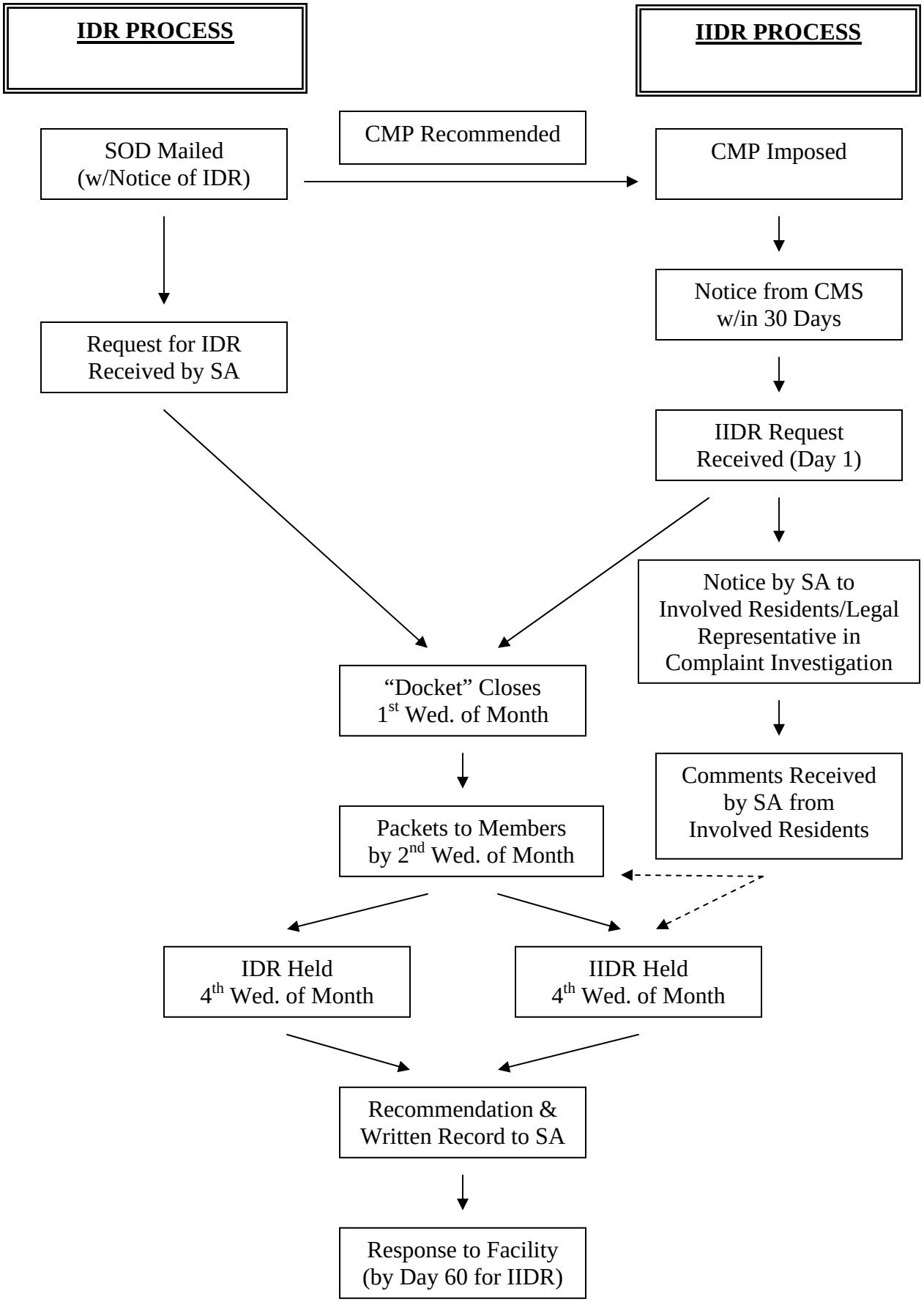
The focus of the IIDR process is the deficiency or deficiencies from a survey for which CMS imposed a civil money penalty that will be collected and placed in escrow under 42 CFR §488.431(b). While scope and severity is not the subject of the IIDR, the Department and CMS will take into consideration any changes in deficiency findings that result from the IIDR process. Based on such review, the Department and CMS will assess whether any changes to scope and severity or civil money penalty amount are warranted.

The committee will review the deficiency as cited and material submitted by the facility. The committee may recommend, based upon its discussion and review of these materials, that a deficiency be retained or deleted. If it is retained, it may be left under the citation ("tag") where the deficiency was written, moved to a more appropriate tag, or combined with another tag.

Attachments:

The IDR and IIDR Process
IDR and IIDR Committee Membership and Supporting Staff/Sample IDR/IIDR Timelines
Determining Whether IIDR May Be Conducted
Guidance for Facilities Requesting IDR or IIDR
IDR Committee Operating Rules
IIDR Committee Operating Rules

The Informal Dispute Resolution (IDR) and Independent IDR (IIDR) Processes:



IDR and IIDR Committee Membership and Supporting Staff:

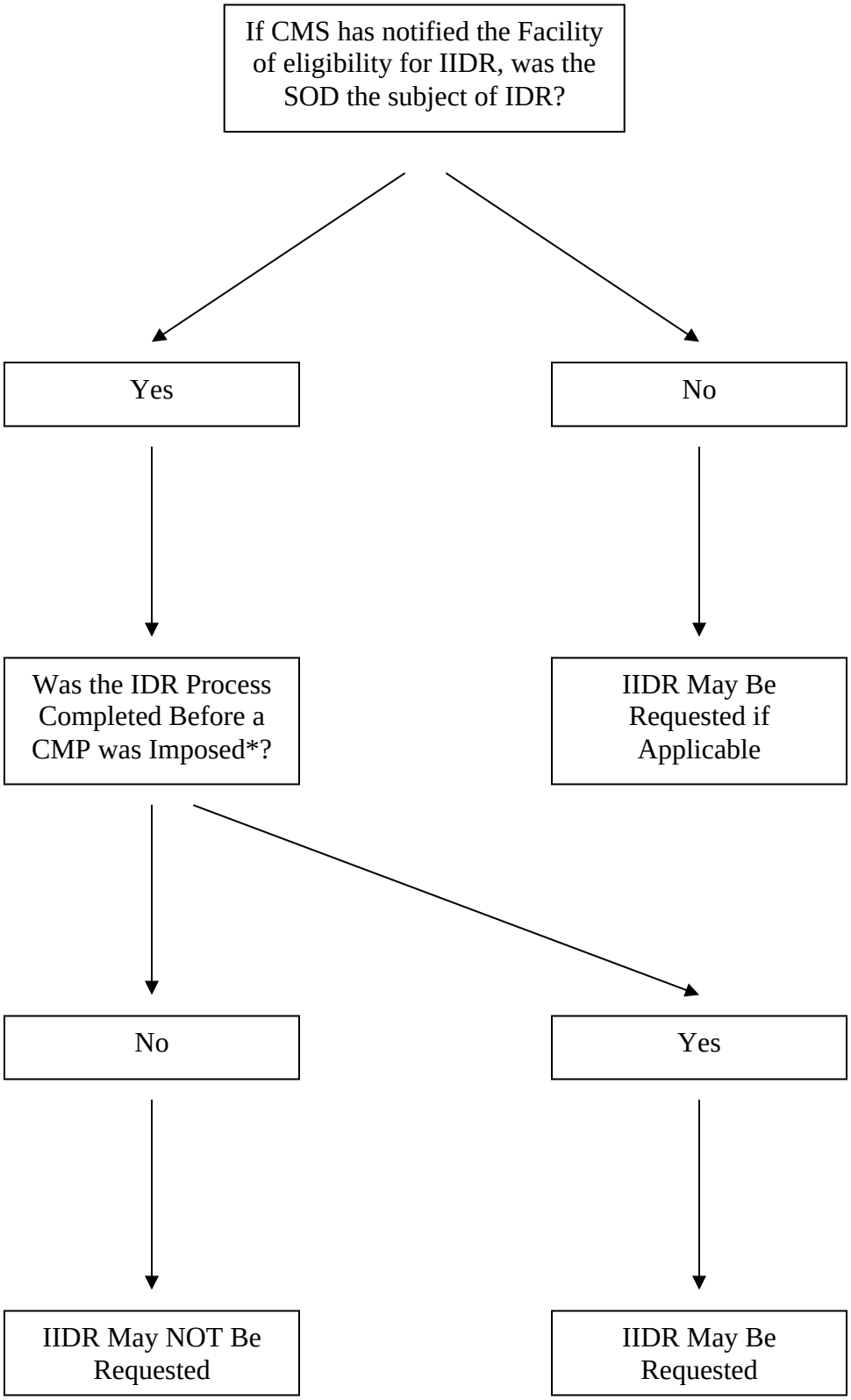
Members:	IDR:	IIDR:
DPH-DHCQ Rep #1	Member/Alternate (Chair)	Not a member
DPH-DHCQ Rep #2	Member/Alternate	Not a member
State LTC Ombudsman	Member/Alternate	Member/Alternate (Chair)
Board of NH Administrator	Member/Alternate	Member/Alternate
Provider Rep – LeadingAge	Member/Alternate	Member/Alternate
Provider Rep – Mass Sr. Care	Member/Alternate	Member/Alternate
Provider Rep – At Large	Member/Alternate	Member/Alternate
Supporting Staff:	IDR:	IIDR:
Packets and Letters	DHCQ Admin Assistant	DHCQ Admin Assistant
Written Record	DHCQ Recorder	DHCQ Recorder

Sample IDR/IIDR Timelines:

IDR/IIDR Request Received On 1st Wednesday Of The Month* (Docket Day)	**IDR/IIDR Request Received On Thursday After 1st Wednesday Of Month***
IDR/IIDR Packet mailed to Members not later than 2nd Wednesday of the month.	IDR/IIDR Packet mailed to Members not later than 2nd Wednesday of the following month.
IDR/IIDR Meeting held on 4th Wednesday of the Month (Day 21)	IDR/IIDR Meeting held on the 4th Wednesday of the following month (</= Day 52)
Results to Facility by Day 60	Results to Facility by Day 60

*Note – Advance all dates by one week when the date of the meeting is held a week earlier, due to the Thanksgiving holiday or other circumstances.

Determining Whether IIDR May Be Conducted:



*CMS has defined "CMP Imposed" as being when CMS sends out its "Notice of Imposition Letter", not when the state recommends a CMP or collection of the CMP.

Guidance for Facilities Requesting IDR or IIDR

1. Ongoing communication between the facility, surveyors and the survey team leader, and DHCQ supervisors is encouraged to ensure that there is an accurate determination of compliance or non-compliance. Surveyors and supervisors will consider relevant and acceptable additional information to refute finding of non-compliance in making their determination of compliance.

2. DCHQ will notify the facility of the right to request Informal Dispute Resolution (IDR) in the cover letter sent to the facility with the Statement of Deficiency.

3. CMS will notify the facility the right to request Independent Informal Dispute Resolution (IIDR) in the letter sent to the facility notifying the facility of the imposition of sanctions.

4. In the case of a follow-up survey, the facility may not request IDR or IIDR for deficiencies that were cited on the original survey but not on the follow-up survey, or examples within a deficiency on the original survey that were not cited on the follow-up survey.

Situation:	**Eligibility for IDR or IIDR:**
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of an informal dispute resolution	Yes
New example of deficiency (i.e., new facts, same tag) at revisit or as a result of an informal dispute resolution.	Yes
Different tag but same facts at revisit or as a result of an informal dispute resolution	No, unless the new tag constitutes substandard quality of care

5. Requests for IDR must be received within ten (10) calendar days of the facility's receipt of the Statement of Deficiency (CMS 2567). Requests for IDR must be made in writing. **Requests for IDR must include one (1) un-redacted copy, one (1) scanned copy of the un-redacted submission in .pdf format, and sixteen (16) redacted copies (see paragraph 8, below, for guidance regarding documentation to be submitted).**

6. Requests for IIDR must be received within ten (10) calendar days of the facility's receipt of the CMS "Notice of Imposition" letter. Requests for IIDR must be made in writing. **Requests for IIDR must include one (1) un-redacted copy, one (1) one scanned copy of the un-redacted submission in .pdf format, and sixteen (12) redacted copies (see paragraph 8, below, for guidance regarding documentation to be submitted).**

7. Facilities must submit a Plan of Correction (POC) for each Statement of Deficiency, regardless of whether they request IDR or IIDR. Failure to submit a POC may result in termination of the facility's provider agreement in accordance with CMS regulations.

8. The facility's written request for IDR or IIDR should:

A. **Be clear and concise.** Facilities should not submit extraneous material, or documentation that does not serve to support their claim.

B. **Redact (block out or delete) – with the exception of the one un-redacted copy – the name of the facility and all resident names** on the submission, including all attachments, and replace resident names with the resident's sample number as stated in the Statement of Deficiency, or other identifiers as applicable. As DPH may not disclose personal or medical information, attachments that do not meet this requirement will not be provided to the committees.

C. Not redact the date of the survey from the Statement of Deficiency.

D. **Include one "Informal Dispute Resolution Response" worksheet (sample attached) for each deficiency** for which IDR or IIDR is requested, which:

1. Identifies the specific deficiencies for which the facility is requesting review.
2. Includes all pages of the Statement of Deficiency for that deficiency.
3. Includes a statement explaining why the facility believes the deficiency should not have been cited.
4. If attachments are included, clearly identifies and cross-references all attachments to the deficiency for which review has been requested; and indicates whether the attachments were provided to surveyors at the time of survey. It is recommended facilities highlight or otherwise notate what is relevant to their request in the attachments.

E. Provide the name and phone number of an individual at the facility whom the Division may contact concerning the request.

9. Facilities may not use the informal dispute resolution process to delay the formal imposition of remedies, or to challenge any other aspect of the survey process, including the:

A. Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;

B. Remedies imposed by the enforcing agency;

C. Alleged failure of the survey team to comply with a requirement of the survey process;

D. Alleged inconsistency of the survey team in citing deficiencies among facilities;

E. Alleged inadequacy or inaccuracy of the informal dispute resolution process.

Informal Dispute Resolution (IDR) Committee Operating Rules

1. It is the role of the IDR Committee to make a recommendation to the Department as to non-compliance or compliance for each deficiency for which IDR has been requested. Recommendations are made by majority vote. Recommendations are made by majority vote, after review and discussion of the request by the IDR Committee.

2. Only IDR Committee members and alternates may participate in the IDR Committee's discussions.

3. Any member (voting or alternate) with a conflict of interest must declare the conflict and withdraw from all relevant discussion, voting and decision making regarding that request.

4. Only primary members of the IDR Committee may vote, unless the alternate member is taking the voting place of the primary member. If a member is not present, or has a conflict of interest, his or her alternate member may vote in his or her place.

5. Members should not bring personal issues to the meetings.

6. Facility specific deficiency information should be kept confidential.

7. Members should refer to the relevant federal regulations and interpretive guidelines to determine compliance or non-compliance.

8. Members shall rely on the written record in conducting their review, which shall consist of documentation supplied by the facility, including the CMS 2567, and clarifying documentation provided by the Department when deemed necessary.

9. The IDR Committee may recommend the deficiency be retained as written, deleted in its entirety, specific examples within the deficiency be deleted, or the findings be moved to a new deficiency. The committee may only recommend changes to scope and severity in cases of immediate jeopardy or substandard quality of care.

10. The Department shall consider the recommendation of the IDR Committee in making its determination as to non-compliance or compliance, and inform the committee at its next meeting if the recommendation of the committee was overturned.

11. The Department will make a final decision and mail the decision letter to the facility. The decision letter shall summarize the deficiency, the facility's request, and the rationale for the decision.

12. Failure of the Department to meet any of the time frames of the IDR process will not invalidate the deficiency.

Independent Informal Dispute Resolution (IIDR) Committee Operating Rules

1. It is the role of the IIDR Committee to make a recommendation to the Department as to non-compliance or compliance for each deficiency for which IIDR has been requested. Recommendations are made by majority vote, after review and discussion of the request by the IIDR Committee.

2. Only IIDR Committee members and alternates may participate in the IIDR Committee's discussions.

3. Any member (voting or alternate) with a conflict of interest must declare the conflict and withdraw from all relevant discussion, voting and decision making regarding that request.

4. Only primary members of the IIDR committee may vote, unless the alternate member is taking the voting place of the primary member. If an IIDR Committee member is not present, or has a conflict of interest, his or her alternate member may vote in his or her place. In the event that a request for IIDR has already been heard by the IDR Committee, the alternate members of the IIDR Committee who did not vote during the IDR shall vote during the IIDR.

5. Members should not bring personal issues to the meetings.

6. Facility specific deficiency information should be kept confidential.

7. Members should refer to the relevant federal regulations and interpretive guidelines to determine compliance or non-compliance.

8. Members shall rely on the written record in conducting their review, which shall consist of documentation supplied by the facility, including the CMS 2567, and clarifying documentation provided by the Department when deemed necessary.

9. The IIDR Committee may recommend the deficiency be retained as written, deleted in its entirety, specific examples within the deficiency be deleted, or the findings be moved to a new deficiency. The committee may only recommend changes to scope and severity in cases of immediate jeopardy or substandard quality of care.

10. If the Department accepts the IIDR Committee's recommendation, the Department will mail the decision letter to the facility. The decision letter shall summarize the deficiency, the facility's request, and the rationale for the decision.

11. In the event that the Department disagrees with the recommendation of the IIDR Committee, the Department shall forward the request for IIDR and record of the IIDR Committee to the CMS Regional Office for review and a final decision. Once notified by CMS of its decision, the Department will inform the IIDR Committee at its next meeting of the final decision of the CMS Regional Office.

12. Failure of the Department to meet any of the time frames of the IIDR process will not invalidate the deficiency.